HOUSE No. 4178

The Commonwealth of Alassachusetts

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By Mr. Murphy of Burling	ton, for the committee on Ways and Means on House, No. 4127,
	eure and fair enforcement for Mortgage Licensing Act of 200
An Act adopting the federal	secure and fair enforcement for Mortgage Licensing Act of 2008.
	FOR THE COMMITTEE:
NAME:	DISTRICT/ADDRESS:
Charles Murphy	21st Middlesex

The Commonwealth of Massachusetts

In	the	Year	Two	Thousand	and	Nine

An Act adopting the federal secure and fair enforcement for Mortgage Licensing Act of 2008.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to regulate mortgage loan originators, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by striking out chapter 255F and inserting in place thereof the following chapter:-

CHAPTER 255F. LICENSING OF MORTGAGE LOAN ORIGINATORS.

Section 1. As used in this chapter the following words shall, unless the context otherwise requires, have the following meanings:-

"Clerical or support duties", may include subsequent to the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

"Commissioner", the commissioner of the division of banks.

"Depository institution", shall have the same meaning as in section 3 of the Federal Deposit Insurance Act, and shall include credit unions.

"Division", the division of banks.

"Entity", a person or entity that is a licensee under chapter 255E.

"Federal banking agencies", the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

"Immediate family member", a spouse, child, step child, adopted child, sibling, step sibling, adopted sibling, parent, step parent, adopted parent, grandparent, or grandchild.

"Individual", a natural person.

"Loan processor or underwriter", an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under this chapter; provided, however, that said person shall not represent to the public, through advertising or other means of communicating or providing information including, but not limited to, the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual is licensed or otherwise authorized by law to perform any of the activities of a mortgage loan originator or that such person intends to perform any of the activities of a mortgage loan originator.

"Mortgage loan originator", a person who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates terms of a residential mortgage loan.

"Nationwide mortgage licensing system and registry", a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

"Nontraditional mortgage product", any mortgage product other than a 30-year fixed rate mortgage.

"Person", a natural person, corporation, company, limited liability company, partnership, or association.

"Real estate brokerage activity", any activity involving offering or providing real estate brokerage services to the public, including without limitation: (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (ii) facilitating the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating, on behalf of any person, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction; (iv) engaging in any activity for which a registration or license as a real estate agent or real estate broker is required; and (v) offering to engage in any activity, or act in any capacity, described in clauses (i) to (iv), inclusive.

"Registered mortgage loan originator", any individual who: (a) meets the definition of mortgage loan originator and is an employee of: (i) a depository institution; (ii) a subsidiary that is (A) owned and controlled by a depository institution; and (B) regulated by a federal banking agency; or (iii) an institution regulated by the Farm Credit Administration; and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

"Residential mortgage loan", any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. section 1602(v) or residential real estate upon which is constructed or intended to be constructed a dwelling as so defined.

"Residential real estate", any real property located in the commonwealth upon which is constructed or intended to be constructed a dwelling.

"Unique identifier", a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Section 2. (a) No individual shall act as a mortgage loan originator with respect to any dwelling unless such person has first obtained a mortgage loan originator license from the commissioner or is exempt from the licensure requirement under subsection (b). No person shall knowingly employ or retain a mortgage loan originator unless the mortgage loan originator is licensed under this chapter or is exempt from the licensure requirement under subsection (b). Each licensed mortgage loan originator shall register with the Nationwide Mortgage Licensing System and Registry and shall maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b) The following shall be not be required to obtain a license pursuant to subsection (a): (i) registered mortgage loan originators; (ii) any person offering or negotiating a residential mortgage loan with or on behalf of an immediate family member; (iii) any person offering or negotiating a residential mortgage loan secured by a dwelling that served as the individual's primary residence; (iv) any person admitted to practice law in the commonwealth negotiating the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the person's representation of the client, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; (v) any person engaged solely as a loan processor or underwriter unless said person is acting as an independent contractor; (vi) any person that performs only real estate brokerage activities and is licensed or registered pursuant to sections 87PP to 87DDD1/2, inclusive, of chapter 112, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and (vii) any person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. section 101(53D).

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111 (c) The commissioner may promulgate rules and regulations for the administration and enforcement of this chapter.

Section 3. (a) Any person seeking a mortgage loan originator's license pursuant to this chapter shall file

- an application, accompanied by the appropriate fee, with the division. Said application shall be made on a
- form to be furnished by the division, and shall require the applicant to state his name, the name and
- address of his employer, if any, and such other information as the division may require. The applicant
- shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information
- concerning the applicant's identity, including: (i) fingerprints for submission to the Federal Bureau of
- 119 Investigation, and any governmental agency or entity authorized to receive such information for a state,
- national and international criminal history background check; and (ii) personal history and experience in
- a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission
- of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to
- obtain: (1) an independent credit report obtained from a consumer reporting agency described in section
- 124 603(p) of the Fair Credit Reporting Act; and (2) information related to any administrative, civil or
- criminal findings by any governmental entity.
- 126 (b) The commissioner may enter into agreements with the Nationwide Mortgage Licensing System and
- 127 Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to
- 128 collect and maintain records and process transaction fees or other fees related to licensees or other persons
- subject to this chapter.
- 130 (c) The commissioner may, for the purpose of participating in the Nationwide Mortgage Licensing
- 131 System and Registry, waive or modify any requirement of this chapter and may establish new
- requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and
- 133 Registry.
- 134 (d) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling
- agent for requesting information from the Federal Bureau of Investigation for the purposes of clause (i)
- and subclause (2) of clause (ii) of subsection (a) and distributing information to the Department of Justice
- or any governmental agency.
- 138 (e) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling
- agent for requesting and distributing information to and from any source for the purposes of subclauses
- (1) and (2) of clause (ii) of subsection (a) as so directed by the commissioner.
- 141 Section 4. (a) The commissioner shall issue a mortgage loan originator license to an applicant therefore
- unless the applicant: (i) has had a mortgage loan originator license revoked in any governmental
- jurisdiction; provided, however, that a subsequent formal vacation of such revocation shall not be deemed
- a revocation; (ii) has been convicted of, or pled guilty, admitted to sufficient facts or <u>nolo contendere</u> to, a
- 145 felony in a domestic, foreign, or military court: (a) during the 7-year period preceding the date of the
- application for licensing and registration; (b) at any time preceding such date of application, if such
- 147 felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; or (c) has other
- 148 convictions or admissions to sufficient facts involving fraud, dishonesty, or a breach of trust, or that the
- applicant has had any adverse civil judgments involving fraudulent dealings; provided, however, that a
- pardon of a conviction shall not be a conviction for purposes of this subsection; (iii) has failed to
- demonstrate financial responsibility, character, reputation, integrity and general fitness such as to
- 152 command the confidence of the community and to warrant a determination that such applicant will
- operate honestly, fairly, soundly and efficiently in the public interest, consistent with the purposes of this
- chapter if the applicant is granted a license; provided, however, that for purposes of this clause a person

shall have shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition; and provided further, that a determination that an individual has not shown financial responsibility may include, but shall not be limited to: (a) current outstanding judgments, except judgments solely as a result of medical expenses; (b) current outstanding tax liens or other government liens and filings; (c) foreclosure within the past 3 years; or (d) a pattern of seriously delinquent accounts within the past 3 years; (iv) failure to complete the pre-licensing education requirement described in section 5; (v) failure to pass a written test that meets the test requirement described in section 6; or (vi) has failed to meet the surety bond requirement as required pursuant to section 12. The commissioner shall either grant or deny an application within a reasonable period of such filing. If the commissioner denies an application for licensure, he shall notify the applicant of the denial, in writing, within 10 days of such denial. Within 20 days thereafter, the commissioner shall enter upon the division's records a written decision and findings containing the reasons supporting the denial and shall forthwith give written notice thereof by registered mail to the applicant. Within 30 days after receipt of such notice, the applicant may seek judicial review of the denial in accordance with section 14 of chapter 30A.

- (b) A mortgage loan originator may be employed by no more than 1 entity. Each license issued to a mortgage loan originator shall be provided to, and maintained by, the employing entity at the employing entity's main office. If the employment of a mortgage loan originator is terminated, the employing entity shall return the mortgage loan originator's license to the division within 5 business days after termination. The reason for termination shall be provided to the commissioner. For a period of 1 year after the termination of employment, the mortgage loan originator may request the re-assignment of the license to another employing entity by submitting an application, together with a re-assignment fee as established by the commissioner, to the division. The return of the license of any mortgage loan originator to the division that is not re-assigned to another employing entity shall terminate the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until reactivation of said license. The license of any mortgage loan originator that has been returned to the division and not re-assigned to another employing entity within 1 year of termination of employment shall be cancelled; provided, however, that the person holding the license may reapply to the division for licensure pursuant to this chapter. Each license shall state the name of the mortgage loan originator licensee and the name and main office address of the entity employing such mortgage loan originator.
- Section 5. (a) An applicant for a mortgage loan originator's license shall complete a minimum of 20 hours of pre-licensing education approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards which shall include, without limitation: (i) 3 hours of federal law and regulations; (ii) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; (iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace; and (iv) state law and regulation, which shall include instruction on state consumer protection laws and other related statutes.
- Section 6. (a) An applicant for a mortgage loan originator's license shall pass, in accordance with the standards established under this section, a qualified written examination developed by the Nationwide
- Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide
- 195 Mortgage Licensing System and Registry based upon reasonable standards.

- 196 (b) A written examination shall not be considered a qualified written examination for purposes of this
- section unless the test adequately measures the applicant's knowledge and comprehension in appropriate
- subject areas, including, but not limited to: (i) ethics; (ii) federal law and regulation pertaining to
- mortgage origination; (iii) state law and regulation pertaining to mortgage origination; and (iv) federal
- and state law and regulation, including instruction on fraud, consumer protection, the nontraditional
- 201 mortgage marketplace, and fair lending issues.
- 202 (c) No person shall be considered to have passed the qualified written examination unless the person
- achieves a test score of not less than 75 per cent correct answers to questions. A person may retake the
- qualified written examination 3 consecutive times with each consecutive taking occurring at least 30 days
- after the preceding examination. Upon failing 3 consecutive written examinations, a person shall not be
- 206 eligible to sit for another written examination for a period of at least 6 months. A licensed mortgage loan
- originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not
- taking into account any time during which such individual is a registered mortgage loan originator.
- Section 7. (a) A mortgage loan originator's license issued pursuant to this chapter shall be valid for a
- 210 period of not more than 1 year. The division may renew a mortgage loan originator's license upon the
- 211 submission of documents showing that: (i) the mortgage loan originator remains in compliance with this
- chapter; (ii) the mortgage loan originator has satisfied the annual continuing education requirements
- 213 pursuant to section 8; and (iii) the mortgage loan originator has paid all required fees for renewal of the
- 214 license. The license of a mortgage loan originator failing to satisfy the minimum standards for license
- 215 renewal shall expire.
- 216 (b) The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the
- 217 standards established by the Nationwide Mortgage Licensing System and Registry. A mortgage loan
- originator licensed pursuant to this chapter who subsequently becomes unlicensed shall complete the
- 219 continuing education requirements for the last year in which the license was held prior to issuance of a
- 220 new or renewed license.
- Section 8. (a) A mortgage loan originator licensed pursuant to this chapter shall, annually, complete a
- 222 minimum of 8 hours of continuing education approved by the Nationwide Mortgage Licensing System
- and Registry based upon reasonable standards, which shall include, without limitation: (i) 3 hours of
- federal law and regulation; (ii) 2 hours of ethics, which shall include instruction on fraud, consumer
- protection, and fair lending issues; (iii) 2 hours of training related to lending standards for the
- 226 nontraditional mortgage product marketplace; and (iv) state law and regulation, which shall include
- instruction on state consumer protection laws and other related statutes. A licensed mortgage loan
- 228 originator who is an approved instructor of an approved continuing education course may receive credit to
- satisfy such licensed mortgage loan originator's annual continuing education requirement at the rate of 2
- 230 hours credit for every 1 hour taught.
- 231 (b) A mortgage loan originator licensed pursuant to this chapter shall: (i) only receive credit for a
- continuing education course in the year in which the course is taken; and (ii) not take the same approved
- 233 course in the same or successive years to meet the annual requirements for continuing education.
- Section 9. The commissioner may participate in the Nationwide Mortgage Licensing System and
- 235 Registry and shall require mortgage loan originators to be licensed and registered through the

- Nationwide Mortgage Licensing System and Registry. The commissioner may establish by
- regulation requirements, including, but not limited to: (i) background checks for: (1) criminal
- 238 history through a database that utilizes the fingerprint of the subject or other databases; (2) civil
- or administrative records; (3) credit history; or (4) any other information as deemed necessary by
- 240 the Nationwide Mortgage Licensing System and Registry; (ii) the payment of fees to apply for or
- 241 renew licenses through the Nationwide Mortgage Licensing System and Registry; provided,
- 242 however, that each application for a license shall be accompanied by an investigation fee and
- 243 license fee provided, that investigation and license fees shall be determined annually by the
- secretary of administration under section 3B of chapter 7; provided, further, that such
- investigation and license fees shall not apply to any community development corporation as
- defined in section 1 of chapter 40F and organized under the General Laws; and provided further,
- 247 that classifications or adjustments as deemed necessary may be made relative to fees for any
- 248 nonprofit agency or corporation incorporated under the laws of the commonwealth for the
- 249 purpose of assisting low to moderate income households in the purchase or rehabilitation of
- 250 family residences of 4 units or less and which holds tax-exempt status granted under the
- provisions of section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or as otherwise
- determined by the commissioner; (iii) the setting or resetting as necessary of renewal or reporting
- 253 dates; and (iv) requirements for amending or surrendering a license or any other such activities
- as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing
- 255 System and Registry.
- Section 10. The commissioner shall establish a process whereby mortgage loan originators may
- 257 challenge information entered into the Nationwide Mortgage Licensing System and Registry by the
- commissioner; provided, however, that anyone aggrieved by a decision of the commissioner may appeal
- said decision in accordance with chapter 30A.
- Section 11. (a) The commissioner may for the administration and enforcement of this chapter, pursuant to
- 261 chapter 30A: (i) deny, suspend, revoke, condition or decline to renew a license for a violation of this
- chapter, or of any rule or regulation issued under this chapter or of any order or directive entered under
- this chapter; (ii) deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee
- fails at any time to meet the requirements of section 4 or section 7, or withholds information or makes a
- 265 material misstatement in an application for a license or renewal of a license; (iii) order restitution against
- 266 persons subject to this chapter for violations of this chapter; (iv) impose fines on persons subject to this
- 267 chapter pursuant to subsections (b) and (c); (v) order or direct persons subject to this chapter to cease and
- desist from conducting business, including immediate temporary orders to cease and desist; (vi) order or
- direct persons subject to this chapter to cease any activities inconsistent with or in violation of this
- chapter, including immediate temporary orders to cease and desist; (vii) enter immediate temporary orders
- 271 to cease business under a license if the commissioner determines that such license was erroneously
- granted or the licensee is currently in violation of this chapter; or (viii) order or direct such other
- affirmative action as the commissioner deems necessary.
- (b) The commissioner may impose a civil assessment on a person subject to this chapter, if the
- commissioner finds, on the record after notice and opportunity for hearing, that such person has violated

- or failed to comply with any requirement of this chapter or any regulation promulgated or order issued by the commissioner.
- 278 (c) The maximum amount of a civil assessment imposed by the commissioner for violation of this
- chapter shall not exceed \$25,000; provided, however, that each violation or failure to comply with any
- directive or order of the commissioner shall constitute separate and distinct violations or failures for
- 281 purposes of imposing civil assessments.
- 282 (d) (i) Whenever the commissioner determines that any person has, directly or indirectly, violated this
- 283 chapter or any rule or regulation promulgated hereunder or any order issued by the commissioner
- pursuant to this chapter or any written agreement entered between the licensee and the commissioner, the
- commissioner may serve upon that person a written notice of intent to: (1) prohibit the person from
- performing in the capacity of a principal employee on behalf of any licensee for a period of time that the
- commissioner considers necessary; (2) prohibit the person from obtaining a license from the
- commissioner for a period up to 36 months following the effective date of an order issued under
- subparagraph (ii) or (iii); or (3) prohibit the person from any further actions, in any manner, as a mortgage
- loan originator or to prohibit the person from being employed by, as agent of, or operating on behalf of a
- 291 licensee under this chapter or any other business which requires a license from the commissioner.
- 292 (ii) A written notice issued under clause (i) shall contain a written statement of the facts that support the
- 293 prohibition and shall give notice of an opportunity for a hearing to be held thereon. The hearing shall
- occur not more than 30 days after the date of service upon the commissioner requesting a hearing. If the
- 295 person fails to submit a request for a hearing within 20 days of service of notice under clause (i), or
- otherwise fails to appear in person or by a duly authorized representative, the party shall be considered to
- 297 have consented to the issuance of an order of prohibition in accordance with the notice.
- 298 (iii) In the event that consent is granted by operation of clause (ii), or if after a hearing the commissioner
- finds that any of the grounds specified in the notice have been established, the commissioner may issue an
- order of prohibition in accordance with clause (i) as the commissioner finds appropriate.
- 301 (iv) An order issued under clauses (ii) or (iii) shall be effective upon service upon the person who is the
- subject of the order. The commissioner shall also serve a copy of the order upon the licensee of which the
- person is an employee or on whose behalf the person is performing. The order shall remain in effect and
- and enforceable until it is modified, terminated, suspended or set aside by the commissioner or a court of
- 305 competent jurisdiction.
- 306 (v) Except as consented to in writing by the commissioner, any person who, pursuant to an order issued
- under clauses (ii) or (iii) has been prohibited from participating in whole or in part as a mortgage loan
- originator shall not, while the order is in effect, continue or commence to perform in the capacity of a
- mortgage loan originator, or otherwise participate in any manner, if so prohibited by order of the
- 310 commissioner, in the conduct of the affairs of: (1) a mortgage loan originator licensed under this chapter;
- 311 (2) any other business which requires a license from the commissioner; or (3) any bank as defined under
- section 1 of chapter 167 or any subsidiary thereof.
- 313 (e) The commissioner may suspend, revoke or refuse to renew the license of the entity employing any
- 314 licensed mortgage originator upon finding that: (i) the entity knew or reasonably should have known that

- 315 the mortgage loan originator violated this chapter or any rule or regulation promulgated hereunder, or any
- other law applicable to the conduct of its business; (ii) the entity knew of any fact or condition which, if it
- 317 had existed at the time of the original application for such license, would have warranted the
- 318 commissioner in refusing to issue such license; or (iii) the mortgage loan originator committed any fraud,
- 319 misappropriated funds or misrepresented any of the material particulars of a mortgage loan transaction
- approved by the entity.
- 321 (f) Nothing in this chapter shall preclude the prosecution of a criminal action arising from an act or
- omission for which a civil assessment has been imposed.
- Section 12. (a) Each mortgage loan originator shall be covered by a surety bond in accordance with this
- 324 section. The surety bond shall provide coverage for each mortgage loan originator in an amount as
- prescribed in subsection (b) and shall be in a form prescribed by the commissioner. If a mortgage loan
- originator is an employee or exclusive agent of an entity, the surety bond of said entity may be used to
- 327 satisfy the mortgage loan originator's surety bond requirement.
- 328 (b) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of
- 329 loans originated as determined by the commissioner.
- 330 (c) Upon commencement of an action on a licensee's bond the commissioner may require the filing of a
- new bond. The commissioner shall, immediately upon recovery upon any action on the bond, require that
- the licensee to file a new bond.
- Section 13. (a) Except as otherwise provided in Public Law 110-289, section 1512, the requirements
- under any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any
- information or material provided to the Nationwide Mortgage Licensing System and Registry, and any
- privilege arising under federal or state law, including the rules of any federal or state court, with respect to
- such information or material, shall continue to apply to such information or material after the information
- or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such
- information and material may be shared with all state and federal regulatory officials with mortgage
- industry oversight authority without the loss of privilege or the loss of confidentiality protections
- provided by federal law or said section 10 of chapter 66.
- 342 (b) For the purposes described in subsection (a), the commissioner may enter agreements or sharing
- arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American
- 344 Association of Residential Mortgage Regulators or other associations representing governmental agencies
- as established by rule, regulation or order of the commissioner.
- 346 (c) Information or material that is subject to a privilege or confidentiality under subsection (a) shall not
- be subject to: (i) disclosure under any federal or state law governing the disclosure to the public of
- information held by an officer or an agency of the federal government or the respective State; or (ii)
- subpoena or discovery, or admission into evidence, in any private civil action or administrative process,
- unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry
- 351 with respect to such information or material, the person to whom such information or material pertains
- waives, in whole or in part, in the discretion of such person, that privilege.

- 353 (d) Section 10 of chapter 66 relating to the disclosure of confidential supervisory information or any
- information or material described in subsection (a) that is inconsistent with said subsection (a) shall be
- superseded by the requirements of this section.
- 356 (e) This section shall not apply with respect to the information or material relating to the employment
- 357 history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan
- originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the
- 359 public.
- 360 Section 14. (a) The commissioner shall have the authority to conduct investigations and examinations
- for: (i) purposes of initial licensing, license renewal, license suspension, license conditioning, license
- 362 revocation or termination, or general or specific inquiry or investigation to determine compliance with
- this chapter, the commissioner shall have the authority to access, receive and use any books, accounts,
- records, files, documents, information or evidence including, but not limited to: (1) criminal, civil and
- administrative history information, including non-conviction data as specified in applicable provisions of
- the General Laws; (2) personal history and experience information including independent credit reports
- obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act;
- and (3) any other documents, information or evidence the commissioner deems relevant to the inquiry or
- investigation regardless of the location, possession, control or custody of such documents, information or
- evidence; and (ii) the purposes of investigating violations or complaints arising under this chapter, or for
- 371 the purposes of examination, the commissioner may review, investigate, or examine any licensee,
- individual or person subject to this chapter, in order to carry out the purposes of this chapter.
- 373 (b) Each licensee or person subject to this chapter shall make available to the commissioner upon request
- the books and records relating to the operations of such licensee, individual or person. The commissioner
- shall have access to such books and records and interview the officers, principals, mortgage loan
- originators, employees, independent contractors, agents, and customers of the licensee, individual or
- person subject to this chapter concerning their business.
- 378 (c) Each licensee or person subject to this chapter shall make or compile reports or prepare other
- information as directed by the commissioner in order to carry out the purposes of this section including,
- but not limited to: (i) accounting compilations; (ii) information lists and data concerning loan transactions
- in a format prescribed by the commissioner; or (iii) such other information deemed necessary to carry out
- 382 the purposes of this section.
- 383 (d) In making any examination or investigation authorized by this chapter, the commissioner may control
- access to any documents and records of the licensee or person under examination or investigation. The
- 385 commissioner may take possession of the documents and records or place a person in exclusive charge of
- 386 the documents and records in the place where they are usually kept. During the period of control, no
- individual or person shall remove or attempt to remove any of the documents and records except pursuant
- 388 to a court order or with the consent of the commissioner. Unless the commissioner has reasonable
- grounds to believe the documents or records of the licensee have been, or are at risk of being altered or
- destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents
- and records shall have access to the documents or records as necessary to conduct its ordinary business
- 392 affairs.

The commissioner shall preserve a full record of each such examination of a licensee. All records of investigation and reports of examination by the commissioner including, but not limited to, work papers, information derived from such reports or in response to such reports, and any copies thereof in the possession of any licensee under the supervision of the commissioner, shall be confidential and privileged communications, shall not be subject to subpoena and shall not be a public record under clause Twentysixth of section 7 of chapter 4. For the purpose of this paragraph, records of investigation and reports of examinations shall include records of investigation and reports of examinations conducted by any bank regulatory agency of the federal government and any other state, and of any foreign government which are considered confidential by such agency or foreign government and which are in possession of the commissioner. In any proceeding before a court, the court may issue a protective order to seal the record protecting the confidentiality of any such record, other than any such record on file with the court or filed in connection with the court proceeding, and the court may exclude the public from any portion of a proceeding at which any such record may be disclosed. Copies of such reports of examination shall be furnished to a licensee for its use only and shall not be exhibited to any other person, organization or agency without prior written approval by the commissioner. The commissioner may furnish to regulatory agencies of the federal government, of other states, or of foreign countries and any law enforcement agency, such information, reports, inspections and statements relating to the licensees under his supervision.

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- (e) In order to carry out the purposes of this section, the commissioner may: (i) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations; (ii) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section; (iii) use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this chapter; (iv) accept and rely on examination or investigation reports made by other government officials, within or without the commonwealth; or (v) accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the commissioner.
- 424 (f) No person subject to this chapter shall knowingly withhold, abstract, remove, mutilate, destroy, or 425 secrete any books, records, computer records, or other information unless otherwise authorized by law or 426 regulation.
- 427 Section 15. It shall be a violation of this chapter for any person to: (a) directly or indirectly employ any 428 scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person; (b) 429 engage in any unfair or deceptive practice toward any person; (c) obtain property by fraud or 430 misrepresentation; (d) solicit or enter into a contract with a borrower that provides in substance that the 431 person or individual subject to this chapter may earn a fee or commission through best efforts to obtain a 432 loan even though no loan is actually obtained for the borrower; (e) solicit, advertise, or enter into a 433 contract for specific interest rates, points, or other financing terms unless the terms are actually available 434 at the time of soliciting, advertising, or contracting; (f) conduct any business covered by this chapter

- without holding a valid license as required under this chapter, or assist or aid and abet any person in the
- conduct of business under this chapter without a valid license as required under this chapter; (g) fail to
- 437 make disclosures as required by this chapter and any other applicable state or federal law including
- regulations thereunder; (h) fail to comply with this chapter or rules or regulations promulgated under this
- 439 chapter, or fail to comply with any other state or federal law, including the rules and regulations
- thereunder, applicable to any business authorized or conducted under this chapter; (i) make, in any
- manner, any false or deceptive statement or representation including, with regard to the rates, points, or
- other financing terms or conditions for a residential mortgage loan, or engage in bait and switch
- advertising; (j) make any false statement or knowingly and willfully make any omission of material fact
- in connection with any information or reports filed with a governmental agency or the Nationwide
- 445 Mortgage Licensing System and Registry or in connection with any investigation conducted by the
- commissioner or another governmental agency; (k) make any payment, threat or promise, directly or
- indirectly, to any person for the purposes of influencing the independent judgment of the person in
- connection with a residential mortgage loan, or make any payment threat or promise, directly or
- indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the
- appraiser with respect to the value of the property; (1) collect, charge, attempt to collect or charge or use
- or propose any agreement purporting to collect or charge any fee prohibited by this chapter; (m) cause or
- require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost
- of the improvements as established by the property insurer; or (n) fail to truthfully account for monies
- belonging to a party to a residential mortgage loan transaction.
- Section 16. Each licensed mortgage loan originator shall submit to the Nationwide Mortgage Licensing
- System and Registry reports of condition, which shall be in such form and shall contain such information
- as the Nationwide Mortgage Licensing System and Registry may require.
- 458 Section 17. The commissioner shall report violations of this chapter, as well as enforcement actions and
- other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the
- provisions contained in section 13, in conformance with Pub. Law 110-289, section 1512.
- 461 Section 18. The unique identifier of any person originating a residential mortgage loan shall be clearly
- shown on all residential mortgage loan application forms, solicitations or advertisements, including
- business cards or websites, and any other documents as established by rule, regulation or order of the
- 464 commissioner.
- 465 Section 19. The commissioner may adopt, amend or repeal rules and regulations which may include an
- 466 adequate net worth requirement for mortgage loan originators to aid in the administration and
- 467 enforcement of this chapter.
- 468 **SECTION 2.** Section 17 and section 18 of chapter 206 of the acts of 2007 are hereby repealed.
- **SECTION 3.** Notwithstanding any general or special law to the contrary, a person licensed under chapter
- 470 255F of the General Laws prior to the effective date of this act shall prove that they have completed all of
- 471 the continuing education requirements to the satisfaction of the commissioner.
- 472 **SECTION 4.** Section 19 of chapter 255F of the General Laws, inserted by section 1, shall take effect
- 473 upon its passage. The remainder of section 1 shall take effect on July 31, 2009; provided, however, that

474	subsection (a) of section 2 of chapter 255F of the General Laws, as appearing in section 1, shall apply on
475	January 1, 2011 or such later date, as approved by the Secretary of the United States Department of
476	Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, section
477	1508, to persons who are licensed mortgage loan originators on July 31, 2009; and provided further, that
478	said subsection (a) of said section 2 of said chapter 255F of the General Laws, as appearing in section 1,
479	shall apply to all other persons on July 31, 2010 or such later date, as approved by the said Secretary,
480	pursuant to the authority granted under said Public Law 110-289, section 1508.